



# City of San Leandro

Meeting Date: September 4, 2018

## Ordinance

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**File Number:** 18-370 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.F.

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Tom Liao  
Community Development Director and  
Andrew Mogensen  
Planning Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** ORDINANCE of the City of San Leandro Adding Title 4, Chapter 4-.18 of the San Leandro Municipal Code Relating to Loud and Unruly Gatherings

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The City Council of the City of San Leandro does **ORDAIN** as follows:

**WHEREAS**, the City of San Leandro ("City") has an overriding interest in planning and regulating the use of property within the City because without stable, well-planned neighborhoods, the quality of life and the character of the City can quickly deteriorate and suffer adverse social, environmental, and economic conditions; and

**WHEREAS**, the California Constitution, Article XI, Section 7, provides cities with the authority to enact ordinances to protect the health, safety, and welfare of their citizens, and municipal code regulations are a permissible exercise of this authority; and

**WHEREAS**, the City Council finds and declares that due to inadequate supervision, some large gatherings of people become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, the obstruction of public streets or rights-of-way by crowds of people or vehicles, public drunkenness, unlawful possession of alcohol or drugs, serving alcohol to minors, fights, disturbances of the peace, urinating or defecating in public, setting off fireworks, vandalism, littering on public property or private property, the presence of persons in areas not designed for occupancy such as rooftops, and persons throwing bottles or other objects or substances at law enforcement or any member of the public; and

**WHEREAS**, the City Council finds and declares that the cited impacts negatively affect both the neighborhoods in which such Loud and Unruly Gatherings occur and the public safety resources of the City; and

**WHEREAS**, the City Council finds that Loud and Unruly Gatherings are detrimental to the public health, welfare and safety and are contrary to the public interest; and

**WHEREAS**, the City Council finds and declares that it is the intent of this Ordinance to protect the public health, safety, general welfare, and quiet enjoyment of residential property, rather to punish; and

**WHEREAS**, it is not the intent of the City Council for this Ordinance to apply to peaceful gatherings or assemblies, such as the protected right to assemble for the purposes of political and social expression; and

**WHEREAS**, the City Council finds and declares that persons who actively or passively aid, abet, or allow Loud and Unruly Gatherings should be held liable for the nuisances created by such gatherings, including, without limitation, the imposition of civil and administrative fines; and

**WHEREAS**, the City Council finds that the proposed Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c)(2) of the California Environmental Quality Act Guidelines); and

**WHEREAS**, this agenda item has been noticed in accordance with the Ralph M. Brown Act (72 hours in advance of the public meeting) and the item appeared upon the agenda for this meeting which was duly noticed in accord with the provisions of the City's Municipal Code.

**NOW, THEREFORE**, the City Council for the City of San Leandro does **ORDAIN** as follows:

**SECTION 1. Incorporation of Recitals.** The City Council finds that the aforementioned recitals are all true and correct and are incorporated herein by reference.

**SECTION 2.** Title 4, Chapter 4-18 of the San Leandro Municipal Code, is amended as identified on Exhibit "A," attached hereto and incorporated herein by this reference.

**SECTION 3. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

**SECTION 4. EFFECTIVE DATE AND PUBLICATION.** This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

# **EXHIBIT A**

## **Chapter 4.18**

### **LOUD AND UNRULY GATHERINGS**

#### Article 1. Purpose

##### 4-18-100 Purpose.

In order to control unnecessary disturbances caused by unruly gatherings in the City, the City declares that it is the City's policy to prohibit unruly gatherings that create a substantial disturbance in the quiet enjoyment of private or public property in a significant segment of a neighborhood as specified in this Chapter. It is not the intent of the City Council for this Chapter to apply to peaceful gatherings or assemblies.

The City determines that unruly gatherings are detrimental to the public health, welfare and safety, and are contrary to the public interest. Therefore, the City Council declares that creating, maintaining, causing, or allowing to be created, maintained, or caused, any unruly gathering in a manner prohibited by or not in conformity with the provisions of this Chapter is a public nuisance and shall be punishable as such in any manner provided by law, including but not necessarily limited to the filing of a civil or criminal action.

#### Article 2. Definitions

##### 4-18-200 Definitions.

For the purpose of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) "Gathering" means a group of persons who have assembled or are assembling for a party or social event, occasion, or activity on private property.

(b) "Responsible person" means and includes, but is not limited to:

(1) the person who owns, rents, leases, or otherwise has legal control of the property where the gathering takes place; or

(2) the person who caused the gathering to occur.

(c) "Juvenile" means and includes any person under the age of eighteen.

(d) "Minor" means and includes any person at least eighteen years old but under the age of twenty-one.

(e) "Unruly gathering" shall mean a gathering of twenty or more persons on private property that results in conduct that causes a "substantial disturbance" in the quiet enjoyment of private or public property in a significant segment of a neighborhood or presents a threat to the health and safety of those in attendance, responding enforcement personnel, or occupants of immediately adjacent properties. For purposes of this chapter, conduct that causes a substantial disturbance shall include, but is not limited to, a noise disturbance generating three or more complaints in any four hour period, obstruction of public streets or rights-of-way by people or vehicles, public drunkenness, unlawful possession of alcohol or drugs, serving alcohol to

juveniles or minors, fights, disturbances of the peace, urinating or defecating in public, setting off fireworks, vandalism, littering on public property or private property not belonging to the host of the gathering, the observed presence of persons on rooftop areas not designed for occupancy, and throwing bottles or other objects or substances at law enforcement or any other person.

### Article 3 Unruly gatherings prohibited.

#### 4-18-300 Causing or allowing unruly gatherings.

It shall be unlawful and constitute a public nuisance for any responsible person(s) to cause or allow an unruly gathering to occur on any private property within the City. An unruly gathering may be abated by the City by all reasonable means including, but not limited to, an order requiring the unruly gathering to be disbanded, the issuance of citations, and/or the arrests of any law violators under any applicable local laws and state statutes.

#### 4-18-400 Participating in unruly gatherings.

It shall be unlawful and a violation of this chapter for any person to attend or participate in an unruly gathering in a manner that contributes to the unruly gathering by engaging in conduct that causes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, or presents a threat to the health and safety of those in attendance, responding enforcement personnel, or occupants of immediately adjacent properties, as defined in Section 4-18-200(e) of this Chapter.

#### 4-18-500 Notice of unruly gathering - Mailing to property owner.

When a police officer or other duly authorized city employee determines that an unruly gathering is occurring or has occurred, and either the unruly gathering was hosted by a person or persons other than the owner, or responding personnel are unable to determine whether the owner was the host, the police department shall mail a notice to the owner of the property where the unruly gathering occurred. Notice to the property owner(s) will be issued pursuant to Section 1-12-410 of this Code.

#### 4-18-600 Persons liable for a response to an unruly gathering.

If the City is required to respond to an unruly gathering, the following persons shall be jointly and severally liable for civil penalties as set forth in Section 4-18-700 of this Chapter, in addition to liability for any injuries to City personnel or damage to City property:

(a) The person or persons who own the property where the unruly gathering took place; provided, that notice has been mailed to the owner of the property as set forth herein.

(b) The responsible person or persons; provided, however, that if the responsible person is a juvenile, then the parents or guardians of the juvenile will be jointly and severally liable for penalties and liabilities herein.

(c) Any persons in attendance at and engaging in conduct contributing to the unruly gathering as set forth in Section 4-18-200(e) of this Chapter.

(d) Nothing in this section shall be construed to impose liability on a property owner or responsible person for the conduct of persons who are present without the express or implied consent of the property owner/responsible person as long as the property owner or responsible person has taken reasonable steps, including but not limited to requesting police assistance to exclude such uninvited participants from the property. Where an invited person engages in conduct which the property owner or responsible person could not reasonably foresee and the conduct is an isolated instance of a person at the gathering violating the law which the property owner or responsible person is unable to reasonably control without the intervention of the police, the unlawful conduct of that person shall not be attributable to the property owner or responsible person for the purposes of determining whether the gathering constitutes an unruly gathering.

#### 4-18-700 Enforcement.

(a) Any citation issued for an unruly gathering as defined in Section 4-18-200(e) of this Chapter shall be deemed to be prima facie evidence of a violation of the provisions of this Chapter for purposes of administrative enforcement.

(b) Any violation of this Chapter shall be a misdemeanor and is subject to criminal, civil or administrative enforcement as provided in this Code. Each hour such violation is committed or is permitted to continue shall constitute a separate offense and may be punishable as such.

(c) Section 4-18-200(b) of this Chapter shall not be applicable to a property owner when they do not reside or occupy the property where the unruly gathering has occurred and the property owner is entitled to receive rent or other valuable consideration for the use of the property. A property owner that meets the above conditions and continues to allow violations of this chapter shall be guilty of an infraction and may be subject to civil or administrative enforcement in accordance with Chapter 1-12 of this Code.

(d) If administrative enforcement is initiated in accordance with Chapter 1-12, penalties shall be assessed against all responsible persons, and individuals liable for the City's intervention to abate an unruly gathering pursuant to Section 4-18-300 of this Chapter.

(1) Violation(s) of this Chapter will result in a penalty pursuant to Section 1-12-415 of this Code.

(2) The administrative citation penalties provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an unruly gathering.

(e) Once a police officer or other duly authorized city employee has determined there has been a violation of this Chapter, the owner(s) of the property where the violation occurred may be subject to administrative action for allowing a subsequent violation of this Chapter to occur on the property, provided the property owner has received notice as required by Section 4-18-500 of this Chapter, and at least fourteen days have elapsed since the date the notice was mailed to the property owner(s). The City may defer or delay administrative action against any property owner who can demonstrate due diligence in preventing future unruly gatherings, such as evicting those responsible for such gatherings.

#### 4-18-800 Collection of delinquent fines.

Pursuant to Section 1-12-410 of this Code, the City may collect any past due administrative fine, penalty, and interest charge by use of all available legal means.

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